

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Nor-Am Cold Storage Inc.,

Petitioner-Appellant,

v.

Plymouth County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 10-75-0287
Parcel No. 12-17-280-004**

On September 1, 2011, the above-captioned appeal came on for a telephone hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Nor-Am Cold Storage Inc. (Nor-Am), was represented by Walter Grimms, Senior Tax Manager with SMART Business Advisory and Consulting, LLC, Schaumburg, Illinois. The Plymouth County Board of Review designated County Attorney Darin Raymond as its legal representative. County Assessor Bob Heyderhoff represented the Board of Review at hearing. Nor-Am submitted one exhibit and the Board of Review relied on the certified record. The Appeal Board having reviewed the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

Nor-Am is the owner of a commercially classified, cold storage facility located at 801 6th Street SW, LeMars, Iowa. According to the property-record card, the improvements consist of several

additions built between the 1960s and 1980s. The improvements consist of roughly 94,000¹ square feet of building area. The site is 6.6 acres.

Nor-Am protested to the Plymouth County Board of Review regarding the 2010 assessment. The January 1, 2010, total assessment of Nor-Am's property was \$2,884,730 allocated as follows: \$159,000 in land value and \$2,725,730 in improvement value. This was a change from the previous year's assessment. Nor-Am's claim was based on the ground that the property is assessed for more than the value authorized by law under section under Iowa Code section 441.37(1)(b). In its petition, Nor-Am sought a total assessed value of \$1,900,000, which was the purchase price of the property in February 2009.

The Board of Review denied the protest.

In its appeal to this Board, Nor-Am reasserted the same ground and seeks the same relief. We note it also checked the boxes on the appeal form claiming inequity and change in value. We will not consider these claims since they were not raised before the Board of Review.

Nor-Am provided an appraisal prepared by James J. Verschoor, Jr., with LeGrand & Company, Sioux City, Iowa. The appraisal has an effective date of February 2, 2009, and was completed for financing purposes. Verschoor developed the sales approach concluding a value of \$2,530,000 and the cost approach concluding a value of \$2,620,000. His final opinion of value was \$2,550,000.

Verschoor included six comparable properties for analysis. All were similar cold-storage facilities located in the mid-west that sold between March 2005 and July 2007. Three of the properties were located in Iowa, two in Nebraska, and one in Missouri. The unadjusted sales prices per square foot range from \$12.76 to \$50.39. After adjustments, the price per square foot of the comparable properties ranged from \$19.14 to \$25.80. Five of the six properties have an adjusted price above

¹ The property record card calculates the building area at roughly 94,000 square feet. However, the sketch does not note any "two-story" areas. The Verschoor appraisal indicates a total building area of 110,000 square feet more or less. The appraisal indicates there are two-story areas over a portion of the main offices. Grimms testified the "two-story" areas included a basement area of minimal contributory value and the footprint and building area is actually 94,000. We rely on the 94,000 base area as it is on the property record card and Grimms indicated this was the building's footprint.

\$23.00 per square foot, with the average adjusted price being \$23.55 and the median adjusted price being \$24.11. Verschoor reconciled the sales data and considered what he believed to be a below average functional design of the subject property, as well as the deteriorating national economy at that time, to conclude \$23.00 per square foot for the subject property, or a total value of \$2,530,000.

We find Verschoor's appraisal to be thorough, well-developed, and a credible indicator of market value. Grimms testified that Nor-Am did not request Verschoor to update his appraisal for the 2010 assessment date. Additionally, we note no evidence was presented to indicate market conditions changed significantly from the date of the appraisal to the January 1, 2010, assessment date. And while the comparables sales are somewhat dated, we recognize the uniqueness of the subject property and realize there are likely few, more recent, comparables available for analysis.

Despite the appraised value of \$2,530,000, Nor-Am relies primarily on the purchase price of the subject property to show it is over-assessed. Walter Grimms testified the subject property was purchased in February 2009 for \$1,900,000, after having been exposed to the market for a year. In Grimms opinion, this is an arms-length transaction. We disagree.

Verschoor's appraisal states he considered the purchase agreement was arms-length. However, he states the broker involved in the transaction believed the sale was distressed. Verschoor reported the subject property had been listed for sale in mid-2008 for \$3,200,000 and there had been an offer for \$2,800,000. This offer fell through because an agreement could not be reached with the city over a wastewater treatment issue. The property was re-listed for \$2,800,000. Nor-Am made an offer of \$1,800,000 before reaching an accepted offer of \$1,900,000.

Additionally, a February 4, 2009, newspaper article ("Council cuts Harkers' payment to ease Nor-Am buyout"), reports the Le Mars City Council voted to release Harkers (the grantee) from a loan of roughly \$115,000 in an effort to "seal the sale" of the subject property to Nor-Am. And Nor-Am purchased the subject property as part of an expansion project.

Plymouth County Assessor Bob Heyderhoff also testified that while he did not personally verify the sale, he was aware of the transaction through the local media. Based on this information, he asserts the sale was “distressed” and not reflective of market value.

Given all of this evidence, we find the sale price of the subject property alone, was not reflective of market value at that time or as of the assessment date in question, January 1, 2010.

Grimms also asserts Verschoors appraisal supports a claim for a lower assessment, but is still not reflective of the market value for the subject property. Grimms notes on page 13 and 14 of the appraisal that Verschoors value conclusion includes the “refrigeration equipment.” Under Iowa section 427A.1, refrigeration equipment used in connection with value-added agricultural processing would not be valued as real property for assessment purposes. First, there is no evidence to definitively determine whether this is the type of refrigeration equipment listed in section 427A.1, or some other type of personal property ordinarily removed. Additionally, Verschoor did not place a value on the refrigeration equipment. And while Grimms asserted the equipment “would likely have a value of at least a couple hundred thousand,” he testified he had not done any analysis to determine the value of the equipment.

While we recognize Iowa law does not include personal property in the assessment of real property, we have no evidence in the record to indicate the value, if any, of the alleged equipment or if it actually falls within an exception set out in section 427A.1. With no value for the refrigeration equipment, we will not arbitrarily reduce the appraiser’s opinion of value.

Nor-Am also presented an appraisal submitted by Grimms, who is both an appraiser and a tax representative. In a letter dated June 8, 2010, to the Board of Review, Grimms stated: “much of our case is centered [on] the fact that Nor-Am Cold Storage purchased [the subject] property in February 2009, for \$1,900,000.” Along with this letter, Grimms includes a “comparable building sales fact chart” that he used in the development of a sales comparison approach to value.

Grimms provided five sales and two active listings for a market value analysis. They are located throughout the Iowa, Nebraska, and Illinois. The properties sold between March 2007 and April 2009. Grimms testified that 50% of the subject building is cold storage. This is in comparison to the cold storage of his comparable sales being 100% for Sales 1 and 2; 50% for Sale 3; 0% for Sale 4; 75% for Sale 5; and 0% for both the active listings.

Grimms adjusts the properties in his appraisal report, but he uses a format for comparison that is unusual and difficult to understand. Grimms lumps several factors into a single adjustment for “building features.” These factors are age, percentage of office space, wall height, and cold storage versus non-cold storage construction. He does not separate out the individual adjustments. For example, Grimms testified that Sale 2, which was built in 1985, had 100% cold storage; but Sale 4, which was built in 1995, had 0% cold storage. Additionally these sales have 22 foot and 20 foot “clear height” respectively; as well as 5% and 8% of office finish respectively. While all of the factors have some differences, the only significant difference we find between Sales 2 and 4 is a 100% difference in cold storage. Yet, both are adjusted +5%. He offers no support for his adjustments other than “reasonableness and common sense.” Because the adjustments are unexplained and not supported we find them illogical.

Additionally, we note some of Grimms math calculations appear to be incorrect. The total adjustment percentage for Sale 4 is noted as +15%; however, the adjustments in the analysis calculate to +5%. Sale 1 in the report is noted as having a total adjustment of +19%, whereas the correct calculation based upon the adjustments made by Grimm should be -22%.

Given these concerns noted, we give minimal consideration to Grimm’s appraisal analysis.

The Plymouth County Board of Review did not offer any new evidence.

After reviewing the record, we find the Verschoor appraisal is the best evidence presented. The Verschoor appraisal has an effective date of February 2009; however, as previously noted, no evidence suggests that this is not a reliable report or indication of value for the January 1, 2010, assessment.

The appraisal demonstrates the subject is assessed for more than authorized by law and its fair market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Nor-Am believes the sales price of the subject property is evidence of fair market value.

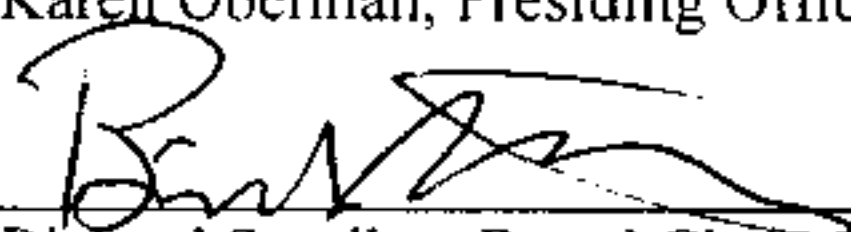
While the sales price can be considered in arriving at market value, we have a concern the subject property's sale may not reflect the actual market value. Verschoor's appraisal supports this concern as does the newspaper article indicating a loan was forgiven to finalize the transaction. Verschoor's appraisal indicates a fair market value of \$2,550,000 based upon the sales and cost approaches to value. While we recognize the appraisal has an effective date of February 2009, there is no evidence to suggest the value is different for the January 1, 2010, assessment. We consider the Verschoor appraisal the best evidence in the record.

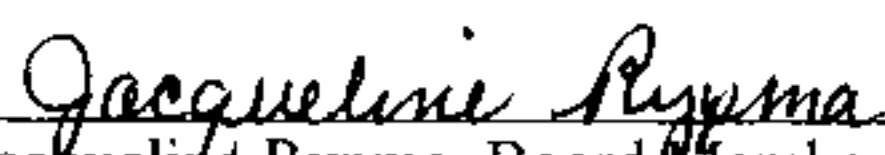
The evidence supports the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we modify the January 1, 2010, assessment of the property located at 521 8th Street, SW, LeMars, Iowa, as determined by Plymouth County Board of Review.

THE APPEAL BOARD ORDERS that the Nor-Am Cold Storage Inc, property located at 801 6th Street, SW, LeMars, Iowa, is modified to a total value of \$2,550,000; representing \$159,000 in land value and \$2,391,000 to the improvements as of January 1, 2010. The Secretary shall mail a copy of this Order to the Plymouth County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 6 day of October, 2011.


Karen Oberman, Presiding Officer


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member

Cc:

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| Certificate of Service | |
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-6</u> , 2011 | |
| By: | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX |
| | <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier |
| | <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other |
| Signature |  |